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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/751,808 | 12/29/2000 | Brana Kukic | NC30318 | 5334 |
| 38879 | 7590 | 10/24/2005 | EXAMINER | |
| DARBY & DARBY P.C. P.O. BOX 5257 NEW YORK, NY 10150-6257 | | | JUNTIMA, NITTAYA | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2663 | |

DATE MAILED: 10/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/751,808

Applicant(s)

KUKIC, BRANA

Examiner

Nittaya Juntima

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to the amendment filed on 8/9/2005.
2. Claims 1-7 are presently rejected under the judicially created doctrine of obviousness-type double patenting.
3. Claim 7 is presently rejected under 35 U.S.C. 102(e).

Specification

4. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed; the Abstract and Detailed description of the invention disclose a link fail-over method for an IMA system, not port swapping.

The following title is suggested: Fault recovery system and method for inverse multiplexed digital subscriber lines.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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6. Claims 1-7 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 11 of U.S. Patent No. 6,963,533. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-7 of the instant application merely broadens the scope of claim 11 of the patent by eliminating the element(s) and there function(s) of the claim, e.g. the test signal for determining characteristics of each of the links and the processor for determining the optimal transmission rate based on the characteristics of the links and the number of links needed to provided the desired transmission rate. It has been held that the omission of an element and its functions is an obvious expedient if the remaining elements perform the same function as before. In re Karlson, 136 USPQ 184 (CCPA). Also note Ex parte Rainu, 168 USPQ 375 (Bd.App. 1969); omission of a reference element whose function is not needed would be obvious to one skilled in the art.

7. Claims 1-7 are also rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 2 of U.S. Patent No. 6,928,056 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-7 of the instant application merely broadens the scope of claim 2 of the patent; by eliminating the element(s) and there function(s) of the claim, e.g. the insertion and analysis of the detection cell and the selection of the optimal data rate by the first and second units. It has been held that the omission of an element and its functions is an obvious expedient if the remaining elements perform the same function as before. In re Karlson, 136 USPQ 184 (CCPA). Also note Ex parte Rainu, 168 USPQ 375 (Bd.App. 1969); omission of a reference element whose function is not needed would be obvious to one skilled in the art. Repairing and retraining the failed active link at an optimal transmission rate and set to idle status in claims 4 and 6 of the instant

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application of the instant application would have been obvious to one skilled in the art as one would want to reuse the existing resource such as a failed active data link instead of provisioning a new link.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

9. Claim 7 is rejected under 35 U.S.C. 102(e) as being anticipated by Klink (USPN 6,580,688 B1).

Regarding claim 7, as shown in Fig. 1a, Klink teaches a method comprising:

selecting at least two data links (WE1- WEn) from a plurality of data links (service links and a standby link) (links WE1 – WEn must be selected to be operating as service links);

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training the at least two data links at an optimal rate (since WE1-WEn are service links operating in a 1:n structure, col. 1, ll 9-11, 52-62 and col. 2, ll 48-50, links WE1-WEn must be trained to operate at the same data rate in order to be protected by “an equivalent circuit,” i.e. one standby link PE);

setting the status of the at least two data links to active (the status of links WE1- WEn is set as “service links,” col. 4, ll 21-23);

selecting at last one data link (a standby link PE, col. 4, ll 49) from the plurality of data links;

training the at least one data link at the optimal rate (“an equivalent circuit,” i.e. a standby link PE, must be trained to operate at the same data link as that of links WE1-WEn in order for it to operate in a 1:n structure and carry the cells of the faulty service link, col. 1, ll 9-11, 52-62 and col. 2, ll 48-50);

setting the status of the at least one data link to idle (standby, col. 4, ll 49); and

switching to use the trained idle data link when one of the active trained data links fails (col. 1, ll 52-62).

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nittaya Juntima whose telephone number is 571-272-3120. The examiner can normally be reached on Monday through Friday, 8:00 A.M - 5:00 P.M.

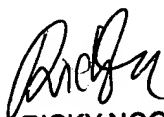
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Ngo can be reached on 571-272-3139. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nittaya Juntima
October 20, 2005

NJ


RICKY NGO
PRIMARY EXAMINER
SE, AU 2663